

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRIAN K. WOOD)	
Claimant)	
VS.)	
)	Docket No. 1,026,461
WTW DRILLING, LLC)	
Respondent)	
AND)	
)	
COMMERCE & INDUSTRY INSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant appealed the May 4, 2006, preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

Claimant alleges he injured his back and knees at work on October 5, 2005, while employed by respondent. In the May 4, 2006, Order, Judge Benedict denied claimant's request for workers compensation benefits after finding claimant did not suffer an accidental injury. The Judge succinctly found and concluded:

Temporary total disability compensation is hereby denied.

The requested medical treatment is hereby denied.

Claimant did not suffer an accidental injury.¹

Claimant contends Judge Benedict erred and, therefore, the May 4, 2006, Order should be reversed. Claimant argues the Judge should not have admitted into evidence the four affidavits offered by respondent and its insurance carrier as they constituted hearsay and, moreover, were not in proper form. In essence, claimant argues the greater

¹ ALJ Order (May 4, 2006).

weight of the evidence establishes that claimant injured at least his back working for respondent.

Conversely, respondent and its insurance carrier contend the preliminary hearing Order should be affirmed. They argue claimant has failed to satisfy his burden of proof because of the unusual circumstances surrounding the alleged injury.

The only issue before the Board on this appeal is whether claimant satisfied his burden of proving that he sustained personal injury by accident arising out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidence compiled to date and considering the parties' arguments, the Board finds and concludes:

Claimant, who was not accustomed to performing physical labor, worked one day (October 5, 2005) for respondent as an oilfield roughneck. Claimant alleges a large steel clamp slammed into both his knees the second time he helped change the drill bit. Claimant described the alleged accident, as follows:

I was putting the clamp on and -- and it slipped, and then Jeremy was holding his side, but then somehow the -- Buddy torqued it up and everything else, and mine slipped and everything else. It fell, and it came back up and then went -- it grabbed -- you know, I grabbed it and everything else, and it slammed against my knees.²

According to claimant, the accident occurred between 11 a.m. and noon and the weather was very cold with sleet. He admits he did not say anything to his co-workers or supervisor when the incident allegedly occurred.

Claimant testified after the clamp incident he hobbled around the well-site until 2 p.m., when his shift ended. According to claimant, after the clamp incident he did not lift any more of the heavy bags of either gypsum or cotton seed that he had carried before the incident.

The evidence is uncontradicted the next day, October 6, 2005, claimant did not work. Claimant testified he did not work that day because his knees, legs, and back were sore and because he had scheduled a doctor's appointment. Claimant also testified that he reported his accident to respondent on that day and that is not challenged.

² P.H. Trans. at 17.

The record is further uncontradicted that on October 6, 2005, claimant sought medical treatment from the Kickapoo Nation Health Center. Although somewhat illegible, the health center's notes indicate at the October 6, 2005, visit claimant was complaining about his right knee, low back and shoulder. Those notes also indicate that claimant told the health center that he had started work the day before and had to lift bags and the purpose of the visit was a back strain and a knee strain.

Claimant's chief complaint to the doctor on October 6, 2005, was his right knee. But claimant testified shortly after that doctor's appointment he took a hot bath and began experiencing swelling in his left knee. When claimant returned to the health center on October 18, 2005, his left knee remained swollen. Again, the health center's notes are nearly illegible but they appear to indicate that claimant provided a history that a clamp hit him in the side of the left knee about two weeks earlier while he was working. Those notes also indicate the doctor diagnosed a left patella fracture for which the doctor recommended crutches and an appointment with Dr. Kenneth E. Teter.

Two days later, on October 20, 2005, Dr. Teter examined claimant and recommended surgery to repair his fractured patella. The doctor performed that surgery five days later. In late December 2005, claimant was hospitalized for several days and underwent additional left knee surgery after it was discovered he had developed a left knee infection at the site of the original surgery.

A December 23, 2005, letter from Dr. Teter to claimant's attorney set forth the doctor's opinions, among others:

1. Claimant's left patella fracture was consistent with a blow to his knee while standing.
2. It is difficult to explain and quite unusual why claimant did not initially experience more pain in his left knee than his right knee.
3. It would be quite unusual for claimant to have a dramatic increase in left knee swelling a day after his injury but it is certainly possible that taking a hot bath would increase the blood flow and cause more swelling.
4. Claimant would probably not be able to carry 100- to 150-pound bags with a left patella fracture.
5. The doctor could not say there was a more likely mechanism of injury to claimant's left knee than the alleged accident at work as that type of injury generally results from something striking the knee or from falling and hitting the knee on the ground.

Although claimant's left knee symptoms did not fit the normal pattern, there is nothing in Dr. Teter's letter that indicates the doctor was suspicious of the alleged mechanism of injury or the history of his symptoms.

To counter claimant's evidence, respondent and its insurance carrier introduced four statements from individuals who were allegedly working with claimant at the time of the alleged accident. Claimant has challenged the Judge's decision to accept those statements into evidence for purposes of preliminary hearing. The Board will consider those statements as the evidentiary issue raised by claimant is not one over which this Board has jurisdiction in a review of a preliminary hearing Order.³ In addition, it would appear the statements would be admissible at a preliminary hearing under K.A.R. 51-3-5a(a).

In essence, the four statements say that Jeremy Marshall, Jesse Perkins, Tommy Lehman, and Steven Hampton worked with claimant at the well-site in question, but that none of them witnessed the alleged accident nor heard claimant complain of either knee pain from being hit by a drill bit or back pain from lifting heavy bags.

For purposes of preliminary hearing, the Board finds claimant, by the barest of margins, has established that he injured his left knee working for respondent. Claimant testified that he was struck on the knees by a clamp and that he had left knee swelling by the end of the following day. Claimant denies any other accident or injury to his left knee following the October 5, 2005, incident. Dr. Teter states that he is unable to explain why claimant's left knee did not initially become more symptomatic than his right knee. On the other hand, the doctor states that claimant's injury is consistent with such an accident and that taking a hot bath could certainly increase the blood flow and cause more swelling. At this stage of the claim, the Board is not persuaded to discount claimant's testimony or find him less than honest.

Based upon this record, claimant has established that his left knee symptoms initially were not as severe as those emanating from his right knee and back. And that it was not until the day after the accident that he really began experiencing left knee symptoms.

In short, the Board finds claimant sustained personal injury by accident arising out of and in the course of his employment with respondent. Accordingly, claimant is entitled to workers compensation benefits for his left knee injury. This claim should be remanded to the Judge for proceedings consistent with these findings.

³ See K.S.A. 44-534a.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.⁴

WHEREFORE, the Board reverses the May 4, 2006, Order and remands this claim to the Judge for further proceedings consistent with the findings above. The Board does not retain jurisdiction over this claim.

IT IS SO ORDERED.

Dated this ____ day of June, 2006.

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ K.S.A. 44-534a(a)(2).